



Wendell Phillips Esq
from his friend,
James C. A.

SENATE....

.....No 86.

REPORT AND RESOLVES

ON THE

R I G H T O F P E T I T I O N .

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Commonwealth of Massachusetts.

IN SENATE, April 6, 1838.

The Joint Special Committee, to whom was referred the Memorial of Oliver B. Morris and 629 others, legal voters of the town of Springfield, requesting the Legislature to "protest against the resolution of Congress of Dec. 21, 1837," and to whom were also committed many other petitions of the same tenor, subscribed in all by 24,086 citizens of this Commonwealth, of whom 12,605 are legal voters, 11,412 women, and 69 minors, have attended to the duty assigned them, and beg leave to

R E P O R T:

The Legislature of this Commonwealth, at its last session, thought itself called upon to remonstrate against the resolution of the House of Representatives of the United States of January, 1837. By that resolution it was ordered, substantially, that all petitions, memorials, &c., relating to slavery, should be laid upon the table, without printing, or reference, or any action whatever, and this was deemed by that Legislature, an unauthorized and dangerous assumption of power. The remonstrance

then adopted, has been without effect, but containing as it did, an expression of opinion as to the powers of Congress on the subject of Slavery in the District of Columbia, it has itself been made the subject of the very usurpation, of which it complained. It was presented to the House of Representatives, on the third day of January last, and was unnoticed, excepting to be condemned under a standing resolution of that body, adopted Dec. 21, 1837, to be laid upon the table, without being debated, referred, printed, or even read, and the voices of our representatives in opposition to this mode of disposition, and in defence of the honor of their state, were silenced. In this, however, there was no *peculiar* cause of complaint. The resolves of the Commonwealth but shared the same fate with the memorials of thousands and tens of thousands of her people. It was the denial to her of a right, to which she was entitled, only in common with the humblest of her citizens, and if, in the one case, the usurpation was the more apparent and glaring, than in the others, it was not the more real, nor justly the more odious.

It is this resolution of Dec. 21, 1837, (which is similar in character, though yet more comprehensive in its effect than that of Jan. 11, 1837,) to which the attention of the Committee is called by the petitions referred to them, and against which the Legislature is requested to protest. Soon after the organization of the Committee, they, through their chairman, addressed the members of the House of Representatives of the United States from the Commonwealth of Massachusetts, now in attendance on the session of Congress; and they have recently received in answer the very able and interesting communication, which they have the pleasure to submit with this

report, for the information of the Legislature. This communication, containing as it does, a full disclosure of the circumstances, attending the adoption of the resolution of the House of Representatives, the practice under it, and a developement of its principles and effects, renders unnecessary any course of extended remark, on the part of the Committee.

The right of the people to petition their rulers in a despotic government, and their representatives in a republic, for redress of grievances, is founded upon principles of natural justice, and is only *protected* by written laws and constitutions. Under free institutions, certainly, it is unquestionable and inherent. In the language of Judge Story, (3 Comm. 745,) “it would seem unnecessary to be expressly provided for in a republican government, since it results from the very nature of its structure and institutions.” He adds, “it is impossible that it could be practically denied, until the spirit of liberty had wholly disappeared, and the people had become so servile and debased, as to be unfit to exercise any of the privileges of freemen.”

In point of fact, however, it has been generally secured by guaranties, under almost every government, pretending to freedom. The right to petition the king and parliament, has been, in England, guarded by many statutes and declarations of rights. (1 Blk. Comm. 143, 3 Story, 745.)

Our fathers brought the right and the love of it, with them, from England, and, when we separated from that country, it needed no form of enactment, no enrolment upon parchment, to give it efficacy under our free institutions. It resided, of course, inalienably in the people. When the Constitution of the United States was adopt-

ed, it contained no provision upon the subject of this right. The first article of amendment, however, secured "the right of the people, peaceably to assemble, and petition the government for a redress of grievances."

It is a singular fact, that this clause met with considerable opposition in the Congress of 1789, not from any disregard to the right, but because it already existed, and was unquestionable. It was said that "it was a self-evident, inalienable right, which the people possess;" "it would never be called in question," &c., while, on the other hand, though it was "admitted to be an inherent, existing right," it was contended that it would be well to make positive "provision that it should not be infringed by the government;"—that, sacred and dear as it was, it ought to be accompanied with the imposing force and solemnity of constitutional sanction. (See 2 Lloyd's Debates, 197—9: 1 Tucker's Blk. App. 299.) Had the great men of that time foreseen the events of our day, they would have found that so far from its being true that the right "would never be questioned," even the added, solemn guaranty of the constitution, would be insufficient for its full protection.

The right is not by the constitution, any more than by natural law, limited to any particular class of grievances. Every thing, over which government have power, whether of private or national concernment, may be made the subject of petition. It is no matter whether "the grievance" affects the petitioner directly as an individual, or indirectly as a citizen;—alone or in common with the whole nation, —whether it is complained of as operating on pecuniary and personal interests, or as injurious to the national justice and honor. In either case, the right of petition is sacred and inviolable.

Your Committee have no doubt that this right is now virtually denied to a large class of petitioners in the House of Representatives of the United States by the resolution of Dec. 21, and the other practices, referred to in the accompanying communication, which have grown up with it, and under it, and are its fit accompaniments; and that this denial is in violation of the spirit of the first article of amendment of the Constitution of the United States, as well as of natural right, and subversive of the best principles of our government.

It is said, indeed, that there is, in fact, no denial or sacrifice of the right; that the petitions are received and laid on the table, though they cannot be “debated, printed, read, or referred,” or any legislative action had upon them. This is but solemn trifling. Is it supposed, that this right carries with it no corresponding obligation? That all, which it implies, is a poor privilege in the people to put upon paper their desires and thoughts, which their representatives must *receive*, but may or may not *read* or *attend to*, according to their pleasure? What is the right of petition—where is the value, which commended it to our fathers, if the petition need not be understood, or its contents known, by those to whom it is addressed? But it is useless to argue this question. The right to ask, supposes an obligation to hear, to consider, and decide, or it is the merest mockery, and unworthy of a place in a free government.

Your committee look upon the *nominal* reception of the petitions, as by no means an alleviation of the measure. It is, at best, but the practical sacrifice of an absolute and sacred right, and the desecration of the spirit of the constitution, under the forms of law; for that very cause the more dangerous, and the more to be deprecated and condemned.

There are other direct and indirect consequences of the resolution and practices of Congress, which are fully developed in the communication before referred to.

Your committee have nothing here to say of the measures proposed by the petitioners, whose rights have been trampled on. The sincerity and respectability of many of them, at least, cannot now be doubted. If their cause be bad, it is to be regretted that it should have received the temporary aid of persecution and oppression. If it be good, the resolutions of the House of Representatives, even if they do not finally conduce to its advancement, will be but flimsy, cobweb barriers to its onward progress. In either view, there is no justification or apology for those who, have "forgotten right," and in their attempts to silence these petitioners, have inflicted a wound not upon them and their cause only, but upon the constitution and upon liberty.

Your committee have however, on this as on all subjects, a strong and unhesitating confidence in the redeeming spirit of the people. If, indeed, it were possible that they should refuse to redress themselves, they might be worthy of the remark of the able and eloquent commentator of the constitution already quoted, "It is impossible that it (the right of petition) should be practically denied, until the spirit of liberty has wholly disappeared, and the people become so servile and debased as to be unfit to exercise any of the privileges of freemen."

The committee, in conclusion, unanimously recommend the adoption of the accompanying resolutions.

All which is respectfully submitted.

For the committee,

JAMES C. ALVORD, *Chairman*

WASHINGTON, March, 22, 1838.

SIR,

The members of the House of Representatives of the United States, from the Commonwealth of Massachusetts, now in attendance on the session of Congress, have received the communication, made by you, in behalf of the committee of the Legislature, to whom were committed the petitions of a great number of citizens, praying the Legislature to protest against the Resolution of the House of Representatives of the 21st of December, 1837, and to demand that it may be rescinded.

After adverting to the fact, that much sensibility has been manifested in Massachusetts at the manner, in which the resolutions of her Legislature of April, 1837, were disposed of under the resolution of the House of Representatives of the 21st of December, 1837,—you request information of the facts in relation to the disposition of those resolutions, and the views of the delegation here of the action required of the Commonwealth under the circumstances of the case.

The resolutions of the Legislature were presented to the House by Mr. Cushing on the 18th of September, 1837, at the special session of Congress, and were laid upon the table under a general order of the House, of the 11th of September, which suspended the action of the House on all matters not embraced in the President's message at the commencement of that session, until the annual session in December.

As the resolution of the House complained of by the Legislature of Massachusetts, had expired with the House, which adopted it, no occasion existed at that time for any action of the House in relation thereto. That resolution was adopted by a vote of 129 to 69 on the 18th of January, 1837, and was in the following words, viz. :

“*Resolved*, That all petitions, memorials, resolutions, propositions or papers, relating in any way or to any extent whatever, to the subject of slavery or to the abolition of slavery, shall, without being printed or referred, be laid upon the table, and that no further action be had thereon.”

A similar resolution had been adopted at the first session of the 24th Congress, on the 26th of May, 1836.

A revised edition of the resolution of the 24th Congress was introduced into the 25th Congress for the first time on the 21st of December, 1837, under circumstances, unusual and extraordinary. It had its origin in a convocation of members of the House, and, it is believed, of the Senate also, from the slave-holding States. In the presence of the House, while in session, and also at the adjournment of the House on the 20th of December, it was announced, that a meeting was then being or about to be held in one of the committee rooms of the House, which the members from the slave-holding States were invited to attend. At the meeting, thus called and assembled, the resolution was agreed upon, and a gentleman designated to present it to the House. Accordingly, on the next day, it was introduced into the House by Mr. Patton of Virginia, under instructions from the meeting, after the rules and orders of the House had been suspended for the purpose of receiving it by the requisite

vote of two-thirds of the members present, which, however, would not have been obtained, if all the members, who voted against the resolution, had also voted against the suspension of the rules.

On introducing the Resolution, Mr. Patton submitted some remarks to the House in relation to it, and among other things, said, that “it involved, so far as he himself was concerned and so far as concerned some portions of the Representatives of the slave-holding states, a *concession*, which they held to be very considerable. He considered it, however, as a timely sacrifice to the peace and harmony of the country.” He also represented that “the desire of those with whose concurrence this resolution was offered, was to extinguish and not to kindle the flame of discord and excitement in the country.” He concluded his remarks by moving “the previous question,” which was carried, and thereby all discussion was prevented on a Resolution, interdicting in express terms all action, debate upon, or even the reading of a class of petitions and memorials, embracing as great a number of petitioners, as can be found on any class of petitions on any other subject, ever presented to Congress at any single session, with the exception perhaps of the petitions against the annexation of Texas to this Union.

This resolution, agreed upon by a minority of the House, separately assembled out of the House, was adopted by a majority in the House, without time being granted for deliberation or opportunity for discussion; and many of the members, composing that majority, were not admitted to participate in the councils from which emanated this memorable *concession*, as it has been miscalled, to the right of petition.

The journal of the House of the 21st of December,

1837, contains the following entry of what transpired in the House on this occasion :

“ Mr. Patton moved that the rules prescribing the order of business be suspended for the purpose of receiving and acting upon a resolution in the words following, viz :

“ *Resolved*, That all petitions, memorials, and papers, touching the abolition of slavery, or the buying, selling, or transferring of slaves in any state, district, or territory, of the United States, be laid upon the table without being *debated*, printed, *read*, or referred, and that no further action whatever shall be had thereon.”

And on the question, Shall the rules be suspended for the purpose aforesaid? It passed in the affirmative. Yeas, 136 ; nays, 60.”

“ Mr. Patton then submitted the said resolution ; which being again read at the Clerk’s table, the previous question was moved by Mr. Patton, and being demanded by a majority of the members present, the said previous question was put, viz : Shall the main question be now put? And passed in the affirmative. Yeas, 129 ; nays, 62.”

“ The main question was then put, to wit : Will the House agree to the Resolution? And passed in the affirmative. Yeas, 122 ; nays, 74.”

It will be perceived, on referring to the journal, containing the yeas and nays on the preceding questions, (which is herewith transmitted,) that the vote of one of our number is not entered upon the journal in the negative on the main question, because it consisted of a protest against the Resolution itself as unconstitutional, null and void.

This Resolution, thus pressed through the House, re-

asserted all, that was exceptionable in the Resolution of January, 1837, or that was the subject of complaint in the Resolutions of Massachusetts, and it was in terms more obnoxious to the charge of virtually denying the right of petition, inasmuch as it expressly prohibited the reading or debating of any of the proscribed class of petitions, memorials, and papers.

The adoption of this Resolution presented new and sufficient reasons for desiring the consideration of the Resolutions of Massachusetts, with a view to induce the House to rescind its order of the 21st of December, and on the 3d of January, 1838, Mr. Cushing called up those Resolutions. The proceedings had in relation to them, appear in the following extract from the journal.

“Mr. Cushing presented Resolutions adopted by the Legislature of Massachusetts, ‘upon the subject of slavery in the District of Columbia, and the right of petition,’ heretofore presented to this House on the 18th September, 1837, and moved to refer the same to a select committee with instructions to report a resolution rescinding the resolution adopted by this House on the 21st day of December last.”

The speaker decided, that the said Resolutions of the Legislature of Massachusetts came within the provisions of the order of the House of the 21st of December ultimo, and would therefore lie on the table, and the said resolutions were laid on the table accordingly.

From this decision of the chair no appeal could be taken with any reasonable hope, that the House would reverse it, or make a more just and respectful disposition of the Resolutions of a State, asserting that Congress had exclusive legislative jurisdiction over the District of Columbia, and consequently, the right to abolish slavery

therein. By the practical construction, and in accordance with the spirit and intent, if not with the terms, of the order of the 21st of December, no petition, *no resolution*, no paper of any character, touching that subject, however temperate in its spirit or respectful in its language, or however high the source from which it emanates—can be debated, printed, read, or referred. It must be laid upon the table, and no further action whatever can be had thereon.

On the 5th of February, another effort was made, on the motion of Mr. Lincoln, to rescind the resolution of the 21st of December. On presenting a memorial from certain inhabitants of Shrewsbury, praying the House to rescind that Resolution, he moved to refer the memorial to a select committee, with instructions to report a resolution, declaring the Resolution of the 21st of December to be “a violation of the constitutional guaranty of the right of petition, and subversive of the freedom of debate in their Representatives, and that it be rescinded.” On this motion the question of consideration was demanded, and thereupon the question was stated, “Will the House now consider it?” When a motion was made to lay that question with the memorial on the table, which prevailed, Yeas, 128 ; nays, 75.

The motion to lay on the table has precedence of the motion to consider, and is not debateable, so that a discussion was again prevented. This was the only occasion when the yeas and nays were called as a test of the vote of the House, on a motion to rescind the Resolution of the 21st of December. Similar motions, however, have been repeatedly, but unsuccessfully made by various members.

It thus appears, that the House has effectually enjoined

silence upon the interdicted topics, and has refused to remove the injunction by a large and resolute majority.

The order of the 21st of December, was not the specific action of the House upon any petition or memorial, then before it. It was an insulated order, having no appropriate place in any class of the ordinary acts of the House, unless it be among the rules and orders, which prescribe the manner in which petitions and other papers, which may come before the House, may be read, printed, debated, and referred. The rules and orders, however, have hitherto presented no example of an order, proscribing a whole class of petitions of a diversified character, or of a rule requiring, that the Resolutions of the Legislature of a state upon a subject within the exclusive jurisdiction of Congress, or upon any other subject, shall not be read, debated, or referred.

By this order, too, the doom of numerous and various petitions is pronounced, before they are presented or considered; and this departure from the just and ordinary course of legislation seems to be scarcely less justifiable than a judicial decree in advance of the facts, to which it may be applied, and without hearing the parties, who may be affected by it.

If this order admits the nominal right of petition by permitting the reception of petitions—it prohibits any and every exercise of legislative power on the part of the House, and of representative power by its members, which can give value or efficacy to the right of petition.

But the refusal to bear the petitions of the people is not confined to the direct operation of the order of the 21st of December. A majority having become familiar with the principle of excluding from the consideration of the House a numerous and somewhat indefinite class of

petitions—other classes are excluded at the pleasure of the majority. Thus numerous petitions against the annexation of Texas to this Union, from various parts of the country, and signed by not less than one hundred thousand petitioners, have been presented to the House during the present Congress and have been laid upon the table. These petitions do not fall within the proscriptive order, but when presented by a member, who moves a reference to a committee, a motion immediately follows to lay on the table. The motion to lay on the table, having precedence of the motion to commit and not being debateable, always prevails; and this has now become the invariable usage of the House in relation to this class of petitions. The same course is pursued in the disposition of all petitions to rescind the order of the 21st of December. Thus the freedom of debate and the right of petition, share a common fate.

We have not yet been able to ascertain in an authentic form, the number of petitioners, whose petitions have been laid upon the table under the operation of the order of the 21st of December or by special motion to lay upon the table, as habitually made in the cases before specified, but they probably constitute nine tenths of all the petitioners, whose petitions have been presented to the House during the present session.

In sustaining the right of petition, in the House, the delegation from Massachusetts have been of one mind. We have consulted our own sense of duty, and at the same time have conformed, as we believe, to the will of our constituents, in opposing the order of the 21st of December at every stage of its passage, and in making every reasonable effort to rescind it since it was adopted, but without success. The hope and the power of re-

dress remain with the people. When other free states shall have asserted and maintained the right of petition, as fully and firmly, as Massachusetts and her citizens have—the people will be restored to the free and unrestricted enjoyment of this sacred right.

Of the course, which the Legislature of Massachusetts may deem it a duty to adopt in reference to the disposition of its own Resolutions under the order of the 21st of December, it may be deemed improper for us to advise. The Legislature, we have no doubt, will act wisely with reference to this subject, and with a just regard for the honor and dignity of the Commonwealth, and the rights and best interests of her citizens.

We are with great respect, Sir,

Your obedient servants,

JOHN QUINCY ADAMS,
JOHN REED,
LEVI LINCOLN,
C. CUSHING,
W. B. CALHOUN,
RICHARD FLETCHER,
S. C. PHILLIPS,
GEO. GRENNELL, JR.
WM. S. HASTINGS.

*To the HON. JAMES C. ALVORD, Chairman of a Joint
Committee of the Legislature of Massachusetts, &c.*

N. B. Messrs. BRIGGS, BORDEN, and PARMENTER, of the Massachusetts Delegation, being absent from the city, have not had an opportunity of uniting with their colleagues in the foregoing letter.

R E S O L V E S

On the Right of Petition.

Whereas, the House of Representatives of the United States, did, on the twenty-first day of December last, adopt the following resolution, to wit :

“ *Resolved*, That all petitions, memorials, and papers touching the abolition of slavery, or the buying, selling, or transferring of slaves, in any state, district, or territory, of the United States, be laid upon the table, without being debated, printed, read, or referred, and that no farther action be had thereon”—

And whereas, the said resolution is a virtual denial of the right of petition, which results from the very nature of our government, and is secured by the Constitution of the United States, and is also subversive of the freedom of debate : *and whereas*, by force of the said Resolution, the respectful memorials of many worthy citizens of this Commonwealth and of other states, asking for the redress of a grievance, over which Congress has exclusive control, as well as the resolves of the Legislature of this Commonwealth, have been deliberately slighted and contemned, and the voice of Massachusetts, through her representatives in Congress, has been silenced ;—therefore

Resolved, That, we, the Senate and House of Representatives of the Commonwealth of Massachusetts, in General Court assembled, do in the name of the people thereof, solemnly protest against the said Resolution, as an usurpation of ewopr, in violation of the spirit of the

Constitution of the United States ; subversive of the fundamental principles of our own free institutions ; at war with the prerogatives of the people ; destructive of the relations between them and their servants, in assuming to change those servants into masters ; derogatory to the dignity and rights of the states, and dangerous to the Union.

Resolved, That our Senators and Representatives in Congress, in their earnest and united assertion and defence of the right of petition and freedom of debate, against the attacks and assumptions of unauthorised power, deserve, and have, the continued and cordial approbation of the people of this Commonwealth.

Resolved, That His Excellency the Governor be requested to forward a copy of these resolves to each of our Senators and Representatives in Congress, with a request that the same may be laid before that body.



